



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation on April 1, 2003

**NOTICE OF ACTION TAKEN -- DOCKET OST-2003-14701- 3**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

**Applicant: Linea Aerea de Navegacion Dominicana, S.A. (Lan Dominicana)** Date Filed: March 13, 2003

Relief requested: Exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail (1) between Santo Domingo and Punta Cana, Dominican Republic, on the one hand, and Miami and New York, on the other hand; and (2) between Santo Domingo, Dominican Republic, on the one hand, and San Juan, Puerto Rico, on the other hand. The applicant would conduct these services only by wet leasing aircraft from Linea Aerea Nacional Chile, S.A. (Lan Chile).<sup>1</sup>

Date and citation of last action: New authority

Applicant representative: Marshall S. Sinick (202) 626-6651 & Charles F. Donley (202) 626-6840

DOT Analyst: Gordon H. Bingham (202) 366-2404

Responsive pleadings: On March 28, 2003, Continental Airlines, Inc. filed a consolidated response to the applications of Lan Dominicana and Lan Chile. Continental states that it is concerned about Lan Chile's plan to expand its network in Latin America through the creation of affiliated companies, adding that the Department's recent decision to grant authority to Lan Ecuador and Lan Chile (see Order 2003-3-9), at a time when U.S. carriers are unable to codeshare on U.S.-Ecuador routes, could embolden Lan Chile and its partners to expand their network to other countries where comparable rights are unavailable to U.S. carriers. Continental states that in the case of the Dominican Republic it is permitted to codeshare, and as such, Continental does not object to the instant requests of Lan Dominicana or Lan Chile.

**DISPOSITION**

Action: Approved

Action date: April 1, 2003

Effective dates of authority granted: April 1, 2003-April 1, 2004

Basis for approval (bilateral agreement/reciprocity): July 22, 1986 Air Transport Agreement between the United States and the Dominican Republic

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions (attached)

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that Lan Dominicana is financially and operationally qualified to perform the services authorized above. However, we are unable to conclude that Lan Dominicana is substantially owned and effectively controlled by citizens of the Dominican Republic.<sup>2</sup> In that regard, Lan Dominicana states that it is 50.97% Dominican Republic and 49% Chilean owned. Lan Dominicana states that its five-member board of directors consists of three Dominican Republic citizens, one Chilean and one U.S. citizen, and that all of its key management personnel, with the exception of its Operations Manager, are citizens of Dominican Republic.<sup>3</sup> In spite of the fact that we are unable to find that Lan Dominicana is substantially owned and effectively controlled by homeland nationals, we find it appropriate to waive our ownership and control requirements. The carrier is properly licensed and designated by the Government of the Dominican Republic to perform the proposed services, and

<sup>1</sup> On March 19, 2003, Lan Chile filed a request for a statement of authorization under Part 212 to wet lease aircraft to Lan Dominicana for a period of one year (Foreign Air Carrier Licensing Division reference 2003-137).

<sup>2</sup> Lan Dominicana states that the composition of its ownership and control satisfies those provisions of the Agreement. However, it states that should we conclude otherwise, it requests a waiver of the ownership and control requirements set forth in Article 3 of the Agreement.

there is no evidence on the record which would suggest that the ownership of the carrier would be inimical to U.S. aviation policy or interests.

Lan Dominicana may not conduct U.S. operations with its own aircraft and crews without further order of the Department.<sup>4</sup> On April 1, 2003, we concurrently approved Lan Chile's request to wet lease aircraft to Lan Dominicana for a period of one year.

**Action taken by: Paul L. Gretch, Director  
Office of International Aviation**

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Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) our action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*

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<sup>4</sup> The Dominican Republic is currently a Category 2 country under the FAA's International Aviation Safety Assessment Program (IASA).

## **FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY**

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security;<sup>1</sup>
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:

carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

(a) based on its operations in international air transportation that, according to the contract of

<sup>1</sup> To assure compliance with all applicable U.S. Government requirements concerning security, the holder should, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, inform its Principal Security Inspector of its plans.

